

COMMISSIONERS APPROVAL

CHILCOTT *g*

LUND *BLL*

THOMPSON *ok*

TAYLOR (Clerk & Recorder)

Date.....October 16, 2006

Members Present.....Commissioner Greg Chilcott,  
Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board met with Road Supervisor David Ohnstad in regard to the four parcels that did not sell at public auction. It was decided to have another public auction dropping the price to 90% of the appraised value. If two of the parcels do not sell at the 90% appraised value, the price can be dropped to 70% appraised value according to Montana Statute.

In other matters Interim Airport Manager Page Gough brought forth the closeout request for the pavement maintenance, maintenance building and taxi way project. Commissioner Thompson made a motion to have the Chairman sign the closeout documents submitted by Morrison Maierle Engineers. Commissioner Lund seconded the motion and all voted "aye".

Commissioner Thompson made a motion to approve of the hangar lease #397 with Dennis Hyatt. Commissioner Lund seconded the motion and all voted "aye".

The Board met with Public Health Nurse Judy Griffin and Bio Terrorism Coordinator Charmell Owens in regard to Employee Action Forms for increased salaries under a federal grant.

In regard to the Nurses salaries, it was agreed that the \$1.00 an hour increase in wages approved during budget deliberations for the nurses will come from the Bio Terrorism Grant. It was agreed the \$1.00 increase will discontinue when the grant terminates. Commissioner Lund made a motion that the two nurses will receive an extra \$1.00 per hour from the Bio Terrorism grant and .50 per hour for the director, retroactive to September 1<sup>st</sup>. And the increases will cease when the grant terminates. Commissioner Thompson seconded the motion and all voted "aye".

In regard to the Bio Terrorism Coordinator's salary, Commissioner Lund stated based on the added duties and professional responsibility for the Bio Terrorism Coordinator, she made a motion that the Coordinator receive a \$2.40 an hour raise retroactive to

September 1<sup>st</sup>, and the \$2.40 an hour raise terminates when the grant ends. Commissioner Thompson seconded the motion and all voted "aye".

Commissioner Thompson made a motion to approve Resolution 1984 which transfers \$12.44 into the Local Government Study Commission for the balance of their bills. Commissioner Lund seconded the motion and all voted "aye".

In other business Commissioner Chilcott attended a MR TMA (Transportation Management) meeting in Missoula during the afternoon hours.

The Board met to hear the Aspen Springs Subdivision Request for Commission Action. The meeting was held at the Event Pavilion at the Fairgrounds. Minutes of that meeting are as follows:

**Ravalli County Board of County Commissioners  
Meeting Minutes for October 16, 2006**

**6:00 p.m.**

**First Interstate Center, Ravalli County Fairgrounds, 100 Old Corvallis Road,  
Hamilton, Montana**

**Public Hearing**

**Aspen Springs (Wesmont Builders/Developers, Inc.) Major Subdivision and Eight  
Variance Requests**

**1. Call to order**

**Commissioner Chilcott** called the meeting to order at 6:02 p.m.

**(A) BCC**

Greg Chilcott (Present)  
Betty Lund (Present)  
Alan Thompson (Present)

**(B) Staff**

Jennifer De Groot  
Karen Hughes  
James McCubbin  
Renee Van Hoven

**Commissioner Chilcott** led the audience in the Pledge of Allegiance.

**2. Staff Report of the Subdivision Proposal and Eight Variance Requests**

**James McCubbin** explained that pursuant to changes in the Subdivision and Platting Act enacted by State Legislature, the Planning Board held a hearing after

the last Commissioner meeting on Aspen Springs to consider new information. He noted that the Planning Board changed their recommendation. He noted that State Law is not clear if this meeting is a public hearing or a public meeting. He recommended since the meeting was advertised as a public hearing, the Board of County Commissioners should accept public comment. He encouraged people to comment on facts already presented and not to submit any new information.

**Renee Van Hoven** noted that after the Planning Board reviewed the new information, the only substantial change to their recommendations was to Variance 2. Previously, the Planning Board recommended denial, but now is recommending conditional approval as mitigated by Conditions 5 and 6. She noted that the Planning Board had previously combined Variances 7 and 8, but separated them at their last hearing. Their recommendation on those variances did not change. She explained that the Planning Board confirmed their recommendation to deny the subdivision based on unmitigated impacts of the subdivision on local services and public health and safety. She listed three new comments that were received since the last hearing: an email from Lucy Burns which does not have any new information (See Attachment A, Email from Lucy Burns dated October 15, 2006); a draft letter from Dwane Kailey with MDT that cannot be considered because it is new information (See Attachment B, Email from Dwane Kailey dated October 10, 2006); and a letter from WGM Group, Inc., which does not contain new information. (See Attachment C, Letter from Ryan Salisbury to the Commissioners dated October 16, 1006. See also Attachment D, Aspen Springs Staff Report for Second Public Hearing on New Information and Attachment E, Updated Request for Commissioner Action dated October 12, 2006)

### **3. Public Comment on the Subdivision Proposal and Eight Variance Requests**

#### **A) Applicant, followed by other members of the public**

**Ryan Salisbury**, with WGM Group, Inc., noted there had been some changes to the Staff Report. He noted that the applicant agrees with the Staff Report regarding Variance 1 and explained that it is not impossible to develop the subdivision in two phases, although it would involve many up-front costs and infrastructure development. He said that the Homeowner's Association would have to maintain the out-of-date infrastructure. He noted that both DEQ and the Ravalli County Road Department will review each phase of the subdivision prior to final plat and each phase will be able to stand alone.

Regarding Variance 2, he agreed with the Staff Report and recommended conditions. He noted that the developer is proposing submittal of the Level of Service prior to the final plat of Phase 5 because that is when it is expected to drop from A to B. He explained that in the beginning phases, the roads will be cul-de-sacs. After Phase 6, an emergency route that meets AASHTO standards will connect to Mountain View Drive. He noted that the developer is proposing a gravel road as an emergency access for Phases 1 through 18 because a paved

road would need to be torn up for placement of infrastructure. He noted that the emergency access would be paved in Phase 19. He explained proposed Conditions 5 and 6 from the memorandum he gave to the Board. (See Attachment C, Letter from Ryan Salisbury to the Commissioners dated October 16, 2006) He noted that the developer would like help moving forward with the project after Phase 19 and it will be hard to get the required rights-of-way unless the conditions are amended.

He said that the developer agrees with the Staff Report regarding Variances 3, 5, and 6.

He noted that his client agrees with the Staff Report and Planning Board regarding Variance 4. He added that there might be legislation passed soon that reduces the amount of acre feet of water allowed for exempt wells, which will impact one-acre lots. He noted that he agrees with Variance 7 and although the developer originally requested to pay pro rata in the variance, he has agreed to construct the road to County standards and enter a latecomer's agreement. He noted that the developer disagrees with Staff conclusions on Variance 8 and asked for conditional approval.

Regarding the subdivision, he noted that the Staff Report recommended denial based on three pieces of information and disagreed with that analysis. He noted that the developer moved the subdivision from the Planning Board many months ago because he felt he had tried to work with the agencies. He noted that MDT stated that the intersection of Eastside Highway and US Highway 93 is not a public health or safety hazard or accident cluster. He stated he was not sure what else to do other than providing \$2,000 for a study. He also noted that they are contributing \$88,000 toward a roundabout over the life of the project.

He noted that FWP did not find signs of elk on the property, although the land fringes on elk winter range. He noted that there are deer on the property, but the developer left 160 acres of open space for wildlife habitat. He argued that other subdivisions have been approved further into elk winter habitat.

He stated that the development team has been in contact with the Sheriff but has not received an indication of what would be appropriate mitigation. He noted that he has not seen any changes although they have worked on this issue since the Planning Board meeting and asked for input from the Commissioners.

He noted that in general, Aspen Springs is a good project that is outlined in the Growth Policy. He said that as times change, so do growth patterns and Montana will be seeing more of these developments as it grows.

He listed the developer's preferred mitigation for specific phases. He said that the developer would prefer to donate money for the roundabout on a proportional basis prior to each final plat approval. He mentioned Condition 27, which was removed from previous Staff Reports, because it could not be a condition of plat approval to require trails. He noted it is possible to build roads

to hold high volumes of traffic down 40 and 50-foot rights-of-way. He asked to meet current road standards excepting rights-of-way. He noted that the developer changed the lot layout for the Park Board. He said that the developer would work on the parks and donate them to the County if the Park Board would contribute to them and take over liability insurance.

**Sandie Frick** said she lives on Lower Woodchuck Road and is an adjoining property owner to the north of the proposed subdivision. She noted that the only access to her home is Lower Woodchuck Road. She said that the granting of Variance 2 would be negative for her and her neighbors. She noted that the Subdivision Regulations do not mention emergency accesses and noted that another primary access for this subdivision is important. She said that the developer should not be granted the variance to save money and the granting of the variance will compromise safety. She noted that the letter from David Ohnstad was not a formal recommendation and asked the Board to have the developer follow all rules and regulations. She said that the water tests on the subdivision were conducted when they had a high water table. She said that true water tests should be done in winter when the aquifer is not charged by neighboring irrigation.

**Chris Linkenhoker** said that phasing would undermine the process of having a Growth Plan completed because the County might want to have the land set aside for low-density housing. He requested denial of the phasing variance. He noted that in previous meetings, someone commented on traffic accident studies on Lower Woodchuck Road and the information was dismissed due to a lack of proper credentials. He said it would have been easy to ask the presenter to show evidence of her statements and noted that the information was relevant because many people are concerned about traffic safety. He noted that until the impact fee issue is resolved, on either a State or County level, it is hard for the Sheriff's office to give a dollar amount of impacts from subdivisions on his department.

**Margaret Hammerberg** said she lives on Lower Eight Mile Creek road north of Todd Lane. She is concerned about the portion of Lower Eight Mile Road along her property. She said if the road is widened to allow for more capacity, she will lose some of her property and it will void her covenants because she is already at her minimum lot size. She said if an underground culvert is put in and that area where a ditch is located is paved, she will have vehicles coming through her living room. She said that option is both a public safety hazard and a liability for the County. She noted that a high-density subdivision will negatively affect everyone's property values because investors from within and out of the state will come to buy the low-cost. She noted that renters do not have equity in their homes and often the homes are not well-maintained.

**Clayton Gregory** said he lives on Mountain View Drive north of the section of road proposed to be an emergency access. He noted that the road currently does not meet County standards for width which he discovered when the Riverview

Orchards subdivision tried to get an RSID for the road. He noted that adding a pathway to the road will increase the width. He asked if the County was going to use eminent domain to take part of his property and noted that if any portion of his land is taken, his covenants would be void because his lot size would drop below the minimum five acres required. He noted residents in that area like elbow room and noted concerns about a "cluster slum." He noted that cluster housing is better handled closer to an urban setting, like Missoula or Hamilton, where there is existing infrastructure. He said that in Missoula, for every dollar of tax revenue, \$1.45 is paid out by taxpayers to maintain infrastructure. He said that situation could be worse in Ravalli County because of the magnitude of work to be completed.

**Steve Hall** noted his concerns were impacts to traffic, roads, schools, the Sheriff's Department, the Fire Department, high-pressure gas line, water quality and quantity, and lifestyle. He stated that he brought up these concerns to the developer before, but they were never mitigated. He asked the Commissioners to set development standards and plan now for the future. He noted that schools will be overcrowded and there will be traffic problems. He noted that the subdivision is not a Hidden Springs, but is concerned it will become a bedroom community to Missoula. He said that environmental concerns have not been adequately mitigated and asked how increased nitrate levels will be mitigated after the subdivision has approval. He said that the area does not need more affordable housing because there are already affordable homes in the area. He noted the subdivision is in the elk and mule deer winter ranges. He asked the Commissioners to allow responsible growth in Florence and requested denial of the subdivision.

**David DeCan** said he lives on Granite Creek off Eight Mile Creek Road in Florence and has concerns about roads, water supply, public safety, and the Sheriff being able to respond to this area. He noted he has four children in the Florence-Carlton School District and that he moved to Florence for the good schools. He said that there are already 921 students in a school that was built for 900. He said that overcrowding from this subdivision could cause accidents, playground issues, and younger children may get pummeled in the hallways. He noted that even if the subdivision averaged 0.5 children per home, the school population would increase by 325+ kids, a 30% increase. He noted that the developer did not offer a substantial amount of money for the schools and he is concerned with overcrowding.

#### B) Rebuttal

**Ryan Salisbury** said that the developer is proposing \$300 per lot to the school district, which is double what many other developers offer. He noted that the developer would participate if impact fees are adopted. He said that affordable housing is relative. He noted that he lives in a 60 by 100-foot lot and enjoys not having to spend much time on his lawn. He said that the development is a

diverse community which has higher level homes as well. He noted that the subdivision contains 400 acres of agricultural land that is not of agricultural importance and that has sufficient sewer and water. He said that the subdivision would be a place for engineers and teachers to live, but noted that most people do not want to see condos in the subdivision. He said that Dwane Kailey noted that cars will queue up at the intersection of Eastside Highway and US Highway 93, but a large backup is not an everyday occurrence.

C) Close Public Comment

4. **Board Deliberation**

(A) Board Deliberation on Variance Request #1 (Phasing)

(i) Board Discussion and Questions

**James** said that his opinion is that if the developer wants to build the off-site section of Mountain View Drive to less than the full right-of-way, it would require an additional variance because it is not covered under the current variance request. He said that Variance 8 seems to cover the entire stretch of Eight Mile Creek Road. He commented that his opinion is that a latecomer's agreement cannot be a condition on the subdivision because it will involve future developers, not this applicant. He noted that a latecomer's agreement could be required through an amendment to the Subdivision Regulations. David Ohnstad is reviewing amendment changes right now and devising a formula for a latecomer's agreement. He said he believes everyone agrees that it is a good idea in principle. He remarked that the intersection of Eastside Highway and US Highway 93 is under the County's jurisdiction because it affects numerous criteria, but the extent of impact is within the Commissioners' discretion. In regards to earlier comments about covenants, he would be surprised if a takings would void the covenants. He noted that the covenants would have to grandfather in those lots less than five acres. He said that the County could do a full taking of a deeded road through eminent domain, but typically, it would be through an easement.

**Commissioner Lund** said that she likes phasing because it allows for time to work on impacts. She said that Dwane Kailey noted in a letter that MDT will be working on Eastside Highway in 2008, which is when Phase 1 of Aspen Springs will begin. She noted that she understands phasing and thinks there will be time to adjust to it. She said that if the subdivision is done in one or two phases, it will be an incredible impact on the community.

**Commissioner Thompson** said he could not disagree more. He said the developer would be given an opportunity to develop over a period of time when the Board does not know the impacts. He noted it would be more appropriate if there was countywide zoning in place. He said he disapproves of the Staff Report under Public Health and Safety, Miscellaneous (Page 21). He noted that in five to ten years, the roads might start to collapse due to severe soils. He noted that the development would then have substandard roads but the County would allow more development. He asked who picks up the cost.

**Commissioner Chilcott** noted that each phase would be reviewed by the Road Department and the Environmental Health Department. He asked if failing roads from earlier phases would have to be brought to County Standard as a requirement for future final plat approvals.

**Karen** said that portions of roads already constructed would not be subject to reconstruction if they failed.

**Commissioner Lund** said that if they do not permit phasing, the developer will have to put in infrastructure and roads that will rot waiting on the other development.

**Karen** noted that if the phasing variance is denied, the subdivision will need to be reviewed as one final plat and all the infrastructure will need to be put into place unless the developer requests another variance.

**Commissioner Thompson** said that roads are not the only impacts on phasing. He said that as he moved around in his own life, he never saw a community where there was only one way in and one way out. He said it makes him feel claustrophobic. He expressed concerns about building the through road at Phase 19. He noted that if Lower Woodchuck Road has a fire, emergency, water, a wreck, or something is washed out, there would be a problem with access. He said that the subdivision has done some things correct, such as putting in a water tower and fire hydrants. He said that if the developer wants to build the subdivision as proposed, he should build roads, put accesses in both ways, put in septic, put in a water tower, donate land to the public and the fire department, and move forward. He noted issues with the proportional payment of \$88,000 to MDT. He noted that the developer could pay hundreds of dollars per year for a road that the Highway Department will have to build to allow this subdivision to exist. He said he was against phasing.

**Commissioner Chilcott** said the beauty of phasing is knowing what is coming over 20 years instead of creating 20 or 30 subdivisions with 30, 40, or 50 lots. He noted that there have been many comments in



newspapers about not having a vision for the future. The County has been offered a plan for 400+ acres and what it will look like in 20 years, which he likes. He noted that the developer said it will cost too much up front, but that is not part of the variance criteria. He said that Commissioner Thompson's arguments are sound and he does not want long, dead-end cul-de-sacs that will cause access problems. He said that he is struggling with phasing because it is hard to envision the ABCD levels of service, trigger points for putting in the road system, and when it changes from a cul-de-sac to a road. He asked for clarification.

**Commissioner Lund** asked Ryan how many lots will be put in before Phase 6 when they make the emergency access connection.

**Ryan Salisbury** said there would be 130 lots.

**Commissioner Chilcott** said that the second connection will be through Mountain View Drive and will be a gravel road until Phase 19.

**Karen** said that Staff's assessment of the phasing variance is based on the review criteria. She noted that Staff concluded addressing the subdivision as a whole through phases rather than individual subdivisions is a better way to address impacts. Staff did not find that the conditions were unique to the property. Staff found that Criteria 3 does not apply. Regarding Criteria 4, there are no zoning regulations and the Growth Policy mentions several different goals, although it appeared to support granting the variance. She noted that if the Board imposes mitigating conditions, adequate infrastructure will be in place throughout the project. She noted that the developer's proposal is not necessarily to implement phases in numerical order. She noted that Conditions 1 through 4 were to mitigate problems and noted that public costs are easier to assess when the County can look at an entire set of phases instead of multiple subdivisions. She explained that Staff found an overall positive finding on the variance.

**Commissioner Lund** commented that the market has a lot to do with phasing. She noted that the developer might find out that the market is not ready after he builds Phases 1 through 6. She said that the subdivision may not reach full build-out.

**Commissioner Thompson** agreed that marketing comes into play. He noted that if something happens to the market and there is an emergency in the area, there might not be all the necessary infrastructure in place. He noted that if the economy says the development is not feasible, they can cease development. He asked what will happen to later phases.

**James** noted that lots on the proposed plat will not exist until they are in a phase that has received final plat approval. He noted that Staff has proposed a number of conditions that would apply at different phases. He noted that the Commissioners can require phasing conditions, such as so many phases before a water tower is required. He noted that he has seen some approvals where the applicant decides not to build out and the County never sees the final plat. He said that sometimes they receive subdivision applications for land which was already given preliminary plat approval. He said that preliminary approval does not force the applicant to get final plat approval and noted that the same principle applies to phasing. He asked the Board to make sure the conditions match the build out of phases.

The Board took a five-minute break.

**Ryan Salisbury** noted that the water tank will be installed in Phase 3.

**Commissioner Chilcott** asked for comments on Criteria 1 under Findings of Fact 1.

**James** noted that addressing every single finding of fact will take a long time. He asked if anyone had a comment on the findings.

**Commissioner Chilcott** noted that the Planning Board has recommended denial of this variance without any conclusions. He said that this is one variance they need to go through with a fine-tooth comb.

**Commissioner Thompson** said he disagrees with Criteria 1, Finding of Fact 1. He said that phasing puts the development out over too long a period of time without knowing what will happen in the area. He said that dramatic changes can take place in five to ten years. He said that the developer will have a free pass to build although there might be negative consequences from the subdivision.

**Commissioner Lund** said she agrees with Criteria 1, Findings of Fact 1 and disagrees with Commissioner Thompson. She said that the County does not often have opportunities to view an entire plan.

**Commissioner Chilcott** said he agrees with Criteria 1, Findings of Fact 1 and would like to have impacts identified, assessed, and mitigated. He read Criteria 1, Findings of Facts 2 and 3. All three Commissioners agreed with the statements. He read Criteria 1, Findings of Fact 4.

**Commissioner Lund** agreed.

**Commissioner Thompson** said there are two questions. He disagreed with the statement that the variance will not be detrimental to

public health and safety. He said that the second part is just a statement about adjacent property owners. He said he disagrees and thinks all the infrastructure should be in place.

**Commissioner Chilcott** said that he also disagrees with the statement. He read Criteria 1, Findings of Fact 5. All three Commissioners agreed. He read Criteria 1, Findings of Fact 6.

**Commissioner Thompson** agreed.

**Commissioner Lund** asked if the developer can file a phase out of sequence.

**Karen** noted that is what the developer is proposing. She explained the conditions Staff recommended if the variance was approved.

**James** noted the statement was based on the developer's proposal, not Staff's recommendation.

**Commissioner Lund** said she agreed with the statement.

**Commissioner Chilcott** noted agreement with the statement. He read Criteria 1, Findings of Fact 7. All three Commissioners agreed with the statement.

He noted that Criteria 1, Findings of Facts 1 and 4 are somewhat similar. He noted that the developer's choice is to propose multiple subdivisions over many years or a phased one with 33 phases in 20 years. He asked Staff if that was the thought process. He asked if Criteria 1, Findings of Fact 4 was more specific than Criteria 1, Findings of Fact 1.

**Karen** said that was the thought process and noted that Criteria 1 Findings of Fact 4 was a statement from the application. She asked if there were any other findings the Board wanted to make.

**Commissioner Chilcott** restated votes on Variance 1, Criteria 1, Findings of Fact 1 through 7: two agreed with Findings of Fact 1, all agreed with Findings of Fact 2, 3, 5, 6, 7, and two disagreed with Findings of Fact 4.

**Commissioner Lund** noted that if the developer put in all the required infrastructure in the first year, but did not build out, the infrastructure could deteriorate.

**Commissioner Thompson** said he disagrees with the variance as a whole. He noted that only seeing one section of the area without knowing what will happen to Lower Woodchuck Road, Upper Woodchuck Road, and Eight Mile Creek Road would be difficult.

**Commissioner Chilcott** said it boils down to a number of individual subdivisions to accomplish a similar vision. He expressed that it is better for a community and the government to look at one planned development than 20 developments.

**Commissioner Thompson** said he did not think the subdivision would come back as 33 different subdivisions if phasing was denied. He believed it would come back as four or five over an extended period of time. He noted that everyone would have a better grasp on impacts by the third or fourth subdivision submittal.

**Commissioner Lund** asked if the subdivision could be a neighborhood plan.

**Karen** said that it could address areas of the Growth Policy and noted that under a broad definition it could be a neighborhood plan if it was adopted into the Growth Policy.

**Commissioner Chilcott** said he agreed that there will be impacts to Lower Woodchuck Road, Upper Woodchuck, and Eastside Highway, but he did not understand how the impacts will change based on how many phases were allowed.

**Commissioner Thompson** noted that water systems are not installed and there is not a separate ingress/egress area for the subdivision. He explained that allowing phasing does not alleviate public health and safety concerns or strains on the Sheriff's Department. He said that the County does not know what the impacts will be to the road, the Sheriff's Department, or the Fire Department. He said that he disagreed with Criteria 1, Conclusions of Law 1.

**Commissioner Lund** said she agreed with it.

**Commissioner Chilcott** said he agreed with it. He read Criteria 1, Conclusions of Law 2. Commissioners Chilcott and Lund agreed with the conclusion and Commissioner Thompson disagreed.

**Commissioner Thompson** said that he disagrees with the conclusion in Criteria 1 Findings of Fact 4. He noted that overall he is in agreement with Staff. He read Criteria 2 Findings of Fact 1. Commissioners Thompson and Chilcott disagreed. Commissioner Lund agreed.

**Commissioner Thompson** said that although this is a new concept for the county, it is not unique. He read Criteria 2 Findings of Fact 2. All three Members agreed. He asked for overall Criteria 2 comments. Both Commissioners Lund and Thompson noted their agreement with Staff that it is not unique.

**Commissioner Thompson** read the Findings of Fact under Criteria 3. All three Commissioners agreed. He read the Conclusion of Law under

Criteria 3. All three Commissioners agreed. He read Criteria 4 Findings of Fact 1.

**Commissioner Lund** agreed.

**Commissioner Thompson** said he is not sure if he agrees. He noted that the property is not zoned, but he believed it would be hard to agree without looking at the Growth Policy goals.

**Commissioner Chilcott** read the applicable countywide goals from the Growth Policy.

**Commissioner Thompson** said he disagrees because Countywide Goal 4 and Countywide Policy 4.1 talk about avoiding additional costs to existing residents. He noted that with phasing, the developer will pay a small amount toward Eastside Highway and Eight Mile Creek Road and that fee will not even be paid immediately. He noted that the public will have to pay for that at this time and purported that the developer needs to mitigate those costs and the possibility of impacts to the School District. He said that if the developer proposes an amount and the School District adopts impact fees, phasing now allows the developer to avoid paying impact fees.

**James** noted that impact fees are paid at the time of construction so impact fees and subdivision review have little to do with each other.

**Commissioner Chilcott** noted that in discussions on the Growth Policy, it was clear that the Board needs to make a public policy supporting cluster development. He said he is not sure that the Growth Policy addresses phasing because the statements are a little vague, at best. He concluded that this does not vary from the Growth Policy.

**Commissioner Lund** said that although the Board cannot consider cumulative impacts with the subdivision, they can consider them under this variance. She believed that the Board could solve the problem with mitigation.

**Commissioner Thompson** said that his vision was for cluster development to happen closer to communities. He listed subdivisions in Corvallis and Stevensville that hooked into city water and sewer. He said he knows what the Growth Policy says, but is not sure if the developer should be allowed to have a cluster development far from towns just because cluster development is good planning.

**Commissioner Chilcott** said that over the past year, he has heard a lot of people ask him to consider cumulative impacts, but he has been told repeatedly by Civil Counsel that he cannot consider cumulative impacts. He noted that if the Board reviews things piecemeal, they cannot consider cumulative impacts, but they could with a larger, phased subdivision. He read Criteria 4, Findings of Fact 1. Commissioners Chilcott and Lund agreed and Commissioner

Thompson disagreed. He read Criteria 4, Findings of Fact 2. All appeared to agree. He read Criteria 4, Conclusions of Law 1. All three members agreed. He read Criteria 4, Conclusions of Law 2. Commissioners Lund and Chilcott agreed, but Commissioner Thompson disagreed. He read Criteria 5, Findings of Fact 1.

**Commissioner Lund** asked Karen about Conditions 1 through 4 and the developer's response to them.

**Karen** explained the conditions and noted that she had not heard the developer express any concerns about them. She noted that one idea for a condition was that contributions on a per-phase basis be adjusted via the Consumer Price Index.

**Commissioner Thompson** agreed that mitigating conditions help prevent impacts, but believed that there are other impacts that are not being fully looked at. He disagreed with Criteria 5 Findings of Fact 1.

**Commissioner Chilcott** asked what was not being mitigated.

**Commissioner Thompson** said that Lower Woodchuck Road and Eight Mile Creek Road will be addressed in Variances 7 and 8, but he is hesitant because the Fire Department will not have a presence on-site, water supply will not be present in the beginning, and there is no secondary access through-road. He noted that the mitigating conditions help, but there are other conditions that he has listed where he would disagree with this finding.

**Commissioner Lund** agreed with Criteria 5, Finding of Fact 1.

**Commissioner Chilcott** thought that Findings of Fact 1 is accurate and agreed with Commissioner Thompson on a couple of things. He asked Staff when would be the appropriate time to talk about mitigation of road connectivity, ingress/egress areas, etc.

**Karen** said that if these issues are critical to a decision on the variance request, now is the time.

**Commissioner Thompson** said that those are his concerns as well and asked the developer if he has any mitigation to propose. He explained that although the developer has offered a parcel of land to the Fire Department and the Sheriff's Office, the Sheriff said he could not staff a satellite office. He noted that the Fire Department would not be building a station immediately so fire protection would have to come from Florence in the beginning phases. He asked for mitigation for putting in a water storage tank in later phases.

**Perry Ashby** noted that he proposes to put in an advanced water system approved by DEQ after 39 lots, which is around Phase 3. He noted that the Fire Department seems satisfied with their proposal to have fire hydrants around Phase 3. He noted that when there was a fire

on the property, the Fire Department wished there were fire hydrants there already.

**Commissioner Chilcott** asked when the water tank will be installed and functional.

**Ryan Salisbury** said it would be the second year of development, because the first 39 lots would be created in the first year. He noted that prior to selling a lot in Phase 3, the water tank would have to be constructed and fire hydrants will serve the surrounding areas if need be. He noted that a commercial pressure tank will be in place for Phases 1 and 2.

**Karen** noted for that occur, the Board would have to require that Phase 3 was Phase 3 or that Phases 1 to 3 be filed in sequential order.

**Commissioner Chilcott** asked if the Board could put a limit on the number of lots sold prior to installation of the water tank.

**James** noted that the proposed condition for the Board to review changes to phases addresses that issue, although it does not ensure it.

**Commissioner Chilcott** asked the Board if they felt any other mitigation was necessary.

**Commissioner Thompson** said that he was opposed to the variance at this time because phasing allows the subdivision to happen over an extended period of time. He noted that there will be safeguards in place with approval and that infrastructure would have to be in place, but he has heartburn with allowing phasing over time. He did not think that the situation could be mitigated.

**Commissioner Lund** said she understood Commissioner Thompson's concerns. She noted that if the Fire Department took \$500 per lot, it would equal \$250,000. She said she did not know if exchange of a lot was a good trade.

**Ryan Salisbury** noted that if the developer provides fire flow, he would not have to donate \$500 per lot. He noted that the worst case scenario is that they would have to pay for 39 lots until the fire flow system was put in. He noted that they will be installing a water storage tank that holds almost a million gallons.

**Commissioner Thompson** agreed that it is appropriate to donate a parcel of land to the Fire Department and thinks that the developer should donate land to the Sheriff and City Hall, noting that this subdivision is a community. He noted that the Fire Department has looked for a place for some time and they have a place off Hidden Valley Road for a satellite station. He noted that many fire stations are putting in satellite stations. He said he still did not agree with phasing.

**Commissioner Chilcott** said that the current requirements for fire service could change in 20 years due, perhaps, to advances in technology. He noted that whatever phase they are in, the developer should have to meet the current fire standards.

**Perry Ashby** said that he has made a proposal so that the fire system meets current performance standards.

**Commissioner Lund** motioned to approve Variance 1, as mitigated through Staff's conditions, adding a requirement to Condition 4 to include the Consumer Price Index to payments, and adding that the developer will meet with the most stringent DEQ regulations in place, and will meet the newest standards in Chapter 5 Articles 3 through 9 of the Subdivision Regulation, should they change.

**Commissioner Chilcott** noted that in a letter dated August 22, 2006, from John Tabaracci, Wesmont agreed to a cost-of-living increase as gauged by the Consumer Price Index. He noted that in the same section, he agreed that each phase would provide necessary infrastructure and Wesmont would comply with the most recent DEQ requirements. He agreed that Condition 4 should be amended and seconded the motion. He noted that John Tabaracci said that extended phasing plans longer than three years are subject to a written agreement between the developer and the County.

**John Tabaracci** noted that the point was that the County has the authority to approve phasing under the Subdivision and Platting Act.

**Commissioner Lund** asked what would constitute a written agreement.

**James** noted that the variance request and these proceedings with the applicant culminating in a decision would be a written agreement that would comply with that section of law.

**Commissioner Chilcott** noted that he did not see a specific condition requiring water tank installation.

**Renee** noted that since Staff is recommending denial, it is not included as a condition.

**Commissioner Lund** amended the motion by requiring the water tower be completed in Phase 3 as a condition of final plat approval of Phase 3.

**Commissioner Chilcott** seconded the amendment.

(ii) Review of Variance Request Against the Five Criteria



1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

Two Board Members agreed; one disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

All three Board Members disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

All three Board Members disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Two Board Members agreed; one disagreed.

5. The variance will not cause a substantial increase in public costs.

Two Board Members agreed; one disagreed.

(See Attachment F, Aspen Springs Variance Request #1 Five Criteria Review)

(iii) Board Decision on Variance Request #1

The Board voted (2-1) to conditionally approve Variance Request #1.  
(See Attachment G, Aspen Springs Variance 1 Vote Sheet)

(B) Board Deliberation on Variance Request #2 (Road connection to the south)

(i) Board Discussion and Questions

**Commissioner Chilcott** asked for comments on Variance Criteria 1.

**Commissioner Lund** noted that the Subdivision Regulations require connections to unplatted areas adjacent to this subdivision. She asked if unplatted land to the east would qualify.

**James** noted it would qualify for that area of adjacent land.

**Commissioner Lund** asked if the subdivision needs to have connections on all four sides.

**James** said it does not and if a subdivision is surrounded by a platted area, it only needs one connection. He noted that there is a platted area to the south of the southern boundary of Aspen Springs, but there is an unplatted area that surrounds the northern and eastern sides. The west side adjoins a county road. He said there are two areas of concern: the adjacent platted area to the south and the unplatted area. There is a requirement to connect to the right-of-way in the south and then a recommendation to put the right-of-way to a border of an unplatted area.

**Karen** agreed and noted that the revised Staff Report addresses both situations on pages 10 and 11 (Findings of Facts 7, 12, 13, and 14). She noted that the variance request was only from the requirement to connect the road through to a platted area.

**James** noted that Finding of Fact 14 on page 11 discusses the possibility of requiring an extension of the easement to Ruby Court, which the Commissioners could place as a condition.

**Commissioner Chilcott** reminded the Board that the Planning Board recommended approval of the variance.

**James** commented that there was an amendment to the Planning Board's recommendation.

**Commissioner Thompson** disagreed with the conclusion.

**Commissioner Lund** agreed with the statement because temporary impacts will be mitigated with access in Phase 19.

**Commissioner Thompson** said that the way the question is proposed causes him grief. He noted that he has never seen a community anywhere where traffic has ingress and egress on one road. He believed that it would be detrimental to public health, safety, and general welfare. He noted that people who purchased homes on Mountain View Drive did so because they wanted a rural lifestyle. He said that this subdivision will have either an emergency access via Mountain View Drive or a primary access. He noted that he lives on a dead end road and if his driveway was extended, he would not be happy about it. He noted that he disagrees with the first criteria because of impacts on public health and safety, but he feels sorry for the folks living on Mountain View Drive.

**Commissioner Chilcott** asked how much of Mountain View Drive is on a 40-foot easement.

**Commissioner Lund** said about 20 feet.

**Commissioner Chilcott** asked for Staff's rationale in Bullet 4 of Findings of Fact 3 under Criteria 1.

**Renee** stated it was Dave Ohnstad's opinion that putting traffic through Lower Woodchuck Road and Eight Mile Creek Road was better than having a portion of the traffic coming from Mountain View Drive.

**Commissioners Chilcott and Thompson** disagreed, and **Commissioner Lund** agreed.

**Commissioner Chilcott** asked for comments on Criteria 1 Conclusions of Law 1. He and **Commissioner Thompson** disagreed, but **Commissioner Lund** agreed. He asked for comments on Criteria 1 Conclusions of Law 2. All three agreed, but **Commissioners Chilcott and Thompson** wished it was done at the beginning of the subdivision.

**Commissioner Chilcott** read Criteria 2 Findings of Fact and Conclusions of Law and all three Commissioners agreed.

**Commissioner Chilcott** requested Board comments on Criteria 3.

**Commissioner Thompson** said he just finished a book about the construction of the intercontinental railroad. He said that if they can engineer railways through mountains, he does not see why the developer cannot build a road in this case. He commented that there should be a through connection, not just an emergency connection.

All three Commissioners agreed that the applicant did not meet Criteria 3.

**Commissioner Chilcott** asked for comments on Criteria 4.

**Commissioner Lund** said that the Growth Policy supports the subdivision and there is no zoning. She noted agreement with all of the Findings of Fact under Criteria 4.

**Commissioner Thompson** said that based on the first bullet under Countywide Policy 4.5, Staff has recommended a secondary and emergency access until Phase 19. Then the emergency access would be improved to a primary access. He said that the subdivision should have

a second access and provide road connectivity for traffic flow from the beginning. He disagreed with Criteria 4.

**Commissioner Chilcott** said that since phasing has been approved, he has a problem with a secondary emergency access and no interconnectivity. He said he disagreed with the Conclusions of Law in Criteria 4 and thinks Phase 19 is too far down the road.

**Commissioner Thompson** said he agreed with Conclusions of Law 1, but disagreed with Conclusions of Law 2.

**Commissioner Chilcott** asked for comments on Criteria 5.

**Commissioner Lund** said that her opinion is contingent on Variances 7 and 8 and asked to discuss them before making this decision.

**Commissioner Thompson** said he disagrees with Findings of Fact 3 under Criteria 5. He noted that until there are two separate accesses, the development will degrade Lower Woodchuck Road. He noted that with Staff's recommendation, this will not go into effect until the portion east of the drainage is approved. He believed there will be an increase in public costs to keep Lower Woodchuck Road open and in good condition.

**Commissioner Chilcott** agreed with Commissioner Thompson that until the road is a primary access, there will be degradation on Lower Woodchuck Road.

**Commissioner Lund** disagreed because without Variances 7 and 8, this variance will not happen. She said that cement trucks could degrade Lower Woodchuck Road rapidly.

**Karen** asked if there were any conditions that would mitigate the impacts of granting this variance.

**Commissioner Lund** said that homebuilding equipment is heavy and that Lower Woodchuck Road could be torn up more rapidly. She recommended a connection through Ruby Court.

**Commissioner Thompson** motioned to deny Variance #2.

**Commissioner Chilcott** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

One Board Member agreed; two disagreed.

2. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

All three Board Members disagreed.

3. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

All three Board Members disagreed.

4. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

One Board Member agreed; two disagreed

5. The variance will not cause a substantial increase in public costs.

One Board Member agreed; one disagreed. There was no conclusion.

(See Attachment H, Aspen Springs Variance Request #2 Five Criteria Review)

(iii) Board Decision on Variance Request #2

The Board voted (2-1) to deny Variance Request #2. (See Attachment I, Aspen Springs Variance 2 Vote Sheet)

(C) Board Deliberation on Variance Request #3 (No-build zone over high pressure gas line)

(i) Board Discussion and Questions

**Commissioner Thompson** noted that the Board has approved many other subdivisions with reduced setbacks from the natural gas pipeline due to Subdivision Regulation changes and the Board should not treat this subdivision differently. He motioned to approve Variance Request

#3 with adoption of the findings of facts and conclusions in the Staff Report.

**Commissioner Lund** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(iii) Board Decision on Variance Request #3

The Board voted (3-0) to conditionally approve Variance Request #3.  
(See Attachment J, Aspen Springs Variance 3 Vote Sheet)

(D) Board Deliberation on Variance Request #4 (To allow for lots with a building site area of less than 7,500 square feet)

(i) Board Discussion and Questions

**Commissioner Lund** motioned to approve Variance Request #4 based on the Staff Report and findings of fact and conclusions of law therein.

**Commissioner Thompson** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(iii) Board Decision on Variance Request #4

The Board voted (3-0) to conditionally approve Variance Request #4.  
(See Attachment K, Aspen Springs Variance 4 Vote Sheet)

(E) Board Deliberation on Variance Request #5 (Flag lots)

(i) Board Discussion and Questions

**Commissioner Thompson** noted that the developer will pave about 68 acres of road and does not seem to be proposing the variance to avoid road construction. He motioned to approve Variance Request #5 and adopt the findings of fact and conclusions of law in the Staff Report.

**Commissioner Lund** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(iii) Board Decision on Variance Request #5

The Board voted (3-0) to conditionally approve Variance Request #5.  
(See Attachment L, Aspen Springs Variance 5 Vote Sheet)

(F) Board Deliberation on Variance Request #6 (On-site road standards)

(i) Board Discussion and Questions

**Commissioner Thompson** said it seems foolish to adopt new road standards and require the developer to build roads to different standards. He motioned to approve Variance Request #6 with the findings of fact and conclusions of law from the Staff Report.

**Commissioner Lund** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(iii) Board Decision on Variance Request #6

The Board voted (3-0) to conditionally approve Variance Request #6.  
(See Attachment M, Aspen Springs Variance 6 Vote Sheet)

(G) Board Deliberation on Variance Request #7 (Off-site road standards – Lower Woodchuck Road)

(i) Board Discussion and Questions

**Commissioner Lund** stated that although the Commissioners cannot impose a recovery contract on this subdivision, they can impose it on future subdivisions in the area so the developer can recoup some of his road costs.

The Board started to go through the Five Criteria. (See 4.(G)(ii) below.)

**James** reminded the Board that the current request is to apply current road standards with a latecomer's agreement or pay pro rata. He noted that if improvements are required, they would be under the current regulations. He noted the Board could conditionally grant the variance

to allow improvements to be made to the new standards and deny the remainder of the variance request.

**Karen** noted that was Staff's and the Planning Board's recommendation.

**Commissioner Thompson** motioned to approve the variance to allow the roads to comply with the new regulations, but to deny the remainder of the request.

**Commissioner Lund** seconded the motion.

(ii) Review of Variance Request Against the Five Criteria

(1) Review of the Variance Request against the Five Criteria

1. The granting of the variance will not be substantially detrimental to the public health, safety, or general welfare or injurious to other adjoining properties.

All three Board Members disagreed.

The Board did not review the remaining four criteria.

(See Attachment N, Variance Request #7 Five Criteria Review)

(iii) Board Decision on Variance Request #7

The Board voted (3-0) to conditionally approve Variance Request #7.  
(See Attachment O, Aspen Springs Variance 7 Vote Sheet)

(H) Board Deliberation on Variance Request #8 (Off-site road standards – Eight Mile Creek Road)

(i) Board Discussion and Questions

The Board took a five-minute break at the recommendation of James so that the Staff Report could be amended.

**Renee** noted that with denial of Variance Request #2, Conditions 5 and 6 of the Staff Report would no longer apply to this variance and the developer will be required to improve the north-south and east-west portion of Eight Mile Creek Road to meet County Standards, including a 60-foot easement.



**Commissioner Lund** asked if the developer could apply for a variance from the 60-foot easement.

**Renee** noted that James said deviations from conditions are not allowed.

**Karen** added that a design exception cannot be granted for easement width.

**Commissioner Thompson** motioned to approve Variance #8 to allow the road to meet the new County Standards, but denying the rest of the variance request.

**Commissioner Lund** seconded the motion but noted that it is not the developer's fault that the road only has a 50-foot easement.

**Renee** explained that the Commissioners can except a substandard easement width.

**Commissioner Thompson** noted that was not part of the motion.

**Commissioner Lund** asked to amend the motion to say that County Standards would apply with the exception of easement width.

**Commissioner Chilcott** asked if that implies AASHTO standards will be met within the 50-foot easement.

**Commissioner Lund** said that the road would be built to AASHTO standards if possible in a 50-foot easement width.

**Ryan Salisbury** asked if they were also including Mountain View Drive.

**Commissioner Chilcott** said that Mountain View Drive would have to be a separate variance.

**Steve Hall** asked if there will be a bike path squeezed in the right-of-way.

**Ryan Salisbury** answered that bike paths are not a requirement of AASHTO or the Subdivision Regulations.

**James** asked if the developer could fit an AASHTO standard road and bike path in a 50-foot easement.

**Ryan Salisbury** said it would be tough because even with a 60-foot easement, a bike path would just be an asphalt extension.

**Commissioner Thompson** said that his understanding is that a road can be developed in a smaller easement than AASHTO standards by adopting curbs and gutters. He noted that he will not second Commissioner Lund's amendment because the amendment states that the road will be built on a smaller easement than exists. He restated his motion that the roads be built to AASHTO standards with a 60-foot easement.

**Karen** noted that a 60-foot easement is not AASHTO standard. It is a standard in the Subdivision Regulations that goes above and beyond AASHTO.

**James** noted that Commissioner Lund's motion amendment is for a variance from the minimum right-of-way, but that all other standards are met.

**Commissioner Chilcott** noted that it is the Board's duty to provide safe, appropriate, adequate transportation infrastructure and that easement size was established to provide safe infrastructure for transportation. He noted that if the road can be safely built in a 50-foot easement with sound engineering, he did not know why the Board would require 60 feet.

**Commissioner Thompson** agreed with that assessment.

**James** noted that David Ohnstad had testified that a County Standard road could not be built without a 60-foot easement.

**Commissioner Lund** commented that the Board does not always agree with him.

**Commissioner Chilcott** noted that the Board hired David Ohnstad as an expert. He said that someone needs to prove that the road could be safe and meet AASHTO standards in a reduced easement width.

The Board took a two-minute recess at request of Commissioner Lund, who wished to speak with Civil Counsel.

**Commissioner Lund** said that this is a difficult decision and noted that there have been many subdivisions approved on this road which were assessed pro rata. She noted that if the Board allows 50-foot easements, it will have major problems. She commented that if another subdivision that uses Eight Mile Creek Road as access is required to have a 60-foot

easement, there will not be any more subdivisions off Eight Mile Creek Road. She noted there could be other ramifications to this decision.

**Commissioner Thompson** asked if the proposed amendment is 50 feet or what AASHTO would allow.

**Commissioner Chilcott** said that if the road could be built in a 50-foot easement, it would be approved.

**Commissioner Thompson** seconded the amendment to the motion to allow construction of a road to AASHTO standards in a 50-foot easement, if possible.

The Board voted (3-0) to approve of the amendment to the motion.

(ii) Review of Variance Request Against the Five Criteria

The Board did not review the Five Criteria beyond their discussion and findings with the Staff Report.

(iii) Board Decision on Variance Request #8

The Board voted (3-0) to conditionally approve Variance Request #8. (See Attachment P, Aspen Springs Variance 8 Vote Sheet)

(I) Board Deliberation on the Subdivision Proposal

(i) Board Discussion and Questions

**Commissioner Chilcott** noted that the Planning Board recommended denial of the subdivision based on unmitigated impacts on local services and public health and safety. He read the three Conclusions of Law under Criterion 1: Effects on Agriculture. All Commissioners agreed on each conclusion. He read Findings of Fact 1 through 4 under Criterion 2: Effects on Agricultural Water User Facilities. All three Commissioners agreed with all four facts.

Regarding Findings of Fact 5 under Criterion 2, **Commissioner Thompson** asked if the applicant “shall” submit the DNRC Beneficial Water Use Permit instead of saying they “could.”

**Renee** noted that since Staff is recommending denial of the subdivision, they did not list conditions of approval for the subdivision. She added that in order to mitigate impacts on agricultural water user facilities, the applicant could submit the permit prior to the first phase, although there are no requirements from DEQ or the Subdivision Regulations for the Beneficial Water Use Permit.

**Commissioner Thompson** agreed with Findings of Fact 5. All Commissioners agreed with the Conclusion of Law under Criterion 2.

**James** said that the Commissioners need to decide if they agree with Staff's recommendation before imposing conditions.

**Commissioner Thompson** noted that the Commissioners have agreed with the Findings of Fact in the Staff Report for Criteria 1 and 2.

**Karen** asked if the Board was making general findings and then adopting appropriate conditions to mitigate as they saw fit.

**Commissioner Lund** said that was the case.

The Board went through Criterion 6 Findings of Fact.

**Commissioner Thompson** noted that the applicant said that \$88,182 will be paid on a per lot basis, which is different from what is listed in the Staff Report. He asked the Board if they wanted to amend Criterion 6 Findings of Fact 9.

**Commissioner Lund** said the Board should not accept the amendment so the funds will be available for the beginning of roundabout construction.

**Commissioner Thompson** agreed, stating that he did not like the per lot payment.

**Commissioner Chilcott** proposed that the amount to MDT be paid prior to final plat approval of the first phase.

**Commissioner Lund** noted that construction of the roundabout in 2008 will coincide with the first phase.

The Board discussed changes to Criterion 6 Findings of Fact 10 and 11 due to votes on variances.

**Renee** noted that the Findings of Fact will be changed by Staff when the Board decides their conclusions and recommended that the Board go straight to the Conclusions of Law.

**Commissioners Thompson and Lund** expressed agreement with Criterion 6 Conclusions of Law 1 and 2.

**Commissioner Lund** suggested a condition to mitigate impacts to US Highway 93 and Eastside Highway. She said the developer should, according to a plan accepted by MDT, complete construction of a right-turn lane or reconstruction of a lane going to Missoula.

**Ryan Salisbury** said that the amount for that improvement would be around five million dollars and would be imposing a regional improvement on this development. He noted that the slip lane will need to happen, but no one knows what needs to be studied at the intersection of US Highway 93 and Eastside Highway. He asked that the Board not condition this in "willy-nilly" fashion, but based on traffic counts and a study.

**Commissioner Lund** stated that it is a plan that would presumably come from the study. She noted that other subdivisions in that area, even small ones, will have the same problem.

**Ryan Salisbury** noted that he received a letter from Jim Lynch in July that said the intersection is not an accident cluster and does not warrant safety funds.

**Nick Kaufman** noted that if the County assesses impact fees, they would pay those, in addition to their contributions to a traffic study.

**Commissioner Thompson** noted that the Board cannot dictate to MDT what the road should look like, but what should be mitigated is the amount of traffic on the road. He asked how the developer can mitigate an additional 5,866 trips.

**Commissioner Lund** asked how the Board can mitigate something in which they cannot be involved. She suggested that the developer offer more money for a study. The study will cost \$100,000 and MDT is only offering \$30,000.

**Karen** noted that the letter from Dwane Kailey is new information that cannot be considered.

**Commissioner Thompson** said that the developer's proposal was for \$2,000, but concluded that the impact is not mitigated and \$2,000 does not go very far.

**Commissioner Lund** asked if the Board wanted to raise the amount or how they wanted to mitigate the impacts.

**Commissioner Thompson** said that it is not his problem to mitigate the impacts, nor will he argue with MDT. He said that if the developer proposes something, he will consider it.

**Nick Kaufman** noted that the developer has done his best to contact MDT. Although he was not able to solicit a response, George Corn and Steve Hall, with the Governor's help, were able to get a response from MDT. He noted that later he received a letter from Jim Lynch which indicated the intersection was not an accident cluster and there was nothing to mitigate. Staff has indicated there may be something to mitigate. He noted that the developer will contribute to figure out the problem and pay his fair share. He said that the Commissioners may have some responsibility to mitigate a problem the Staff thinks is there.

**Commissioner Lund** said they should remove Criterion 6, Conclusions of Law 2 because if there is no solution from MDT, she did not know the answer short of a MDT study. She noted that there will be an impact, but the State of Montana said that there is not an accident problem.

**Commissioner Chilcott** said that part of the Board's role is to mitigate public health and safety concerns before concerns arise.

**Commissioner Lund** noted that the County has no jurisdiction over Federal or State Highways.

**Commissioner Thompson** said he agreed with Criterion 6, Conclusions of Law 2.

**Steve Hall** noted that the Subdivision Regulations state that unmitigated situations are grounds for denial of a subdivision and this is the case here.

**Karen** read from a June 14, 2000, letter from Dwane Kailey to George Corn. She noted that MDT suggested that the County and developer work to identify and mitigate impacts to the intersection.

**Commissioner Chilcott** asked what authority the Board has.

**James** stated that they have the authority to require mitigation or take into account impacts that are felt on a State Highway. He noted that in terms of this impact, if the Board finds that there is an impact at US Highway 93 and Eastside Highway, there is testimony from Duane Kailey that there will be drastic impacts from both Aspen Springs and Legacy Ranch. The Board would then need to identify if the mitigation

offered by the developer is acceptable or not. If it is, it would lead to a condition of approval. If not, it could support denial of the subdivision.

**Commissioner Chilcott** noted that this puts the Board in a difficult position. An agency letter stated that there will be drastic impacts. Asking the County to work with developers to mitigate "drastic," vague impacts is a tall order with no direction because they cannot mitigate impacts when they do not know what they are.

**Perry Ashby** said his only suggestion pertains to SB 185 and impact fees. He noted that the Bill states that if there is an impact, the Commissioners could enact impact fees.

**James** did not think that the Board could assess impact fees for State or Federal Highways.

**Commissioner Chilcott** noted that the TischlerBise Study states that pro rata is an equivalent exaction to impacts. He explained that it would not be cost-effective to do that study when the County already has pro rata in place.

**Perry Ashby** said he offered \$88,000 for the additional slip lane on Eastside Highway because that impact was clearly identifiable. He said that impacts to the intersection of US Highway 93 and Eastside Highway are unknown and the best he can offer is SB 185.

**Commissioner Thompson** noted that after he was elected, the State of Montana took over all secondary highway systems, including maintenance and speed limits. He said that it is the responsibility of the developer and MDT to come to an agreement about the intersection. He said he did not know how to mitigate something he does not control and did not think it could be mitigated.

**Commissioner Lund** agreed that the road is not in the County's jurisdiction and acknowledged there was a problem, but did not know what to do. She said that the simplest thing would be to remove Criterion 6, Conclusions of Law 2 and if the State wants to approach the developer for mitigation, they can step forward at that time.

**Commissioner Chilcott** noted he was in agreement with Commissioner Thompson. He said that the Board has a responsibility to provide a safe transportation system. He noted that although the road might not be within their jurisdiction, it is within the County. He said it was unfortunate that the State did not define the drastic impacts the Board needed to mitigate. He said it did not let the development community off the hook for drastic impacts to infrastructure.